Dec 18 1863

Mr Justice Clifford

SUPREME COURT OF THE UNITED STATES.

No. 315.

JAMES J. ROOSEVELT, PLAINTIFF IN ERROR,

vs.

LEWIS H. MEYER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK

GOVERNMENT PRINTING OFFICE

1631

SUPREME COURT OF THE UNITED STATES.

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1863

Writ of Error to the United States Supreme Court.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the justices of the supreme court of the State of New York, in the first district, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, or some of you, between Lewis H. Meyer, plaintiff, and James J. Roosevelt, defendant, a manifest error hath happened to the great damage of the said James J. Roosevelt, as is said, and as appears by his complaint: We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the first Monday of December next, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States, ought to be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 27th day of October, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States the eighty-seventh.

[SEAL.]

KENNETH GROHITE,
Clerk of the Circuit Court of the United States of America for the southern district of New York, in the second circuit.

Endorsed: James J. Roosevelt, pl'ff in error, *vs.* Lewis H. Meyer, def't in error. Writ of Error to the United States Supreme Court. Filed Oct. 28, 1863.

Citation.

2 UNITED STATES OF AMERICA, *ss:*

To Lewis H. Meyer, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of

error filed in the clerk's office of the supreme court of the State of New York in and for the first district, wherein James J. Roosevelt is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Nelson, justice of the Supreme Court of the United States, this 27th day of October, in the year of our Lord one thousand eight hundred and sixty-three.

S. NELSON.

CHRISTIAN H. SCHARFF,
Att'y for plaintiff in error, 14 *Wall st., N. Y.*
J. BUCHANAN HENRY,
Of counsel.

Endorsed: Citation. Due service of a copy of within citation is hereby admitted.

B. ROELKER, *Att'y for def't in error.*

3 STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the capitol in the city of Albany, on the 29th day of September, in the year of our [L. S.] Lord one thousand eight hundred and sixty-three, before the judges of said court.

Witness Hiram Denio, esquire, chief judge.

F. A. TALLMADGE, *Clerk.*

LEWIS H. MEYER, appellant,
ag't
JAMES J. ROOSEVELT, respondent.

Be it remembered, that on the 5th day of June, in the year of our Lord one thousand eight hundred and sixty-three, Lewis H. Meyer, the appellant in this action, came here into the court of appeals by B. Roelker, his attorney and counsel, and filed in said court his notice of appeal, and return thereto, from a judgment of the supreme court. And James J. Roosevelt, the respondent in said action, afterwards appeared in said court of appeals in person. Which said notice of appeal, and the return thereto filed as aforesaid, are hereunto annexed.

The appeal in this case having been argued by Messrs. B. Roelker and W. Curtis Noyes, counsel for the appellant, and by Mr. George T. Curtis, counsel for the respondent, and due deliberation having been thereupon had, it is ordered and adjudged that the
4 judgment of the supreme court, appealed from, be and the same is hereby reversed, and that judgment in this action be and the same is hereby rendered in favor of the plaintiff, and the appellant therein. And that the defendant herein deliver up the bond and mortgage mentioned in the case submitted, and acknowledge satisfaction thereof and discharge the same of record. And that each party pay his own costs, according to the stipulation con-

tained in the case submitted. And it is hereby certified and stated by this court that the defendant and respondent, on the hearing of this case, relied upon certain provisions in the Constitution of the United States, namely, article I, section 8, clause 5 of the said Constitution, and articles 5, 9, and 10 of the amendments thereof, the effect of which, as the said respondent insisted, was that the debt owing to the said respondent, upon and by virtue of the bond and mortgage mentioned in the submission of the case, could not be paid against the will of the said creditor in anything but gold or silver coin, and that the said claim of the said respondent was overruled and disallowed by this court. And it is further ordered that the record and proceedings in this action be remitted to the supreme court to be proceeded in according to law.

Therefore it is considered that the said judgment of the supreme court, appealed from, be, and the same is hereby, reversed, and that judgment in this action be, and the same is hereby, rendered in favor of the plaintiff and appellant therein, and that the defendant herein deliver up the bond and mortgage mentioned in the case, and
5 acknowledge satisfaction thereof and discharge the same of record, and that each party pay his own costs, according to the stipulation contained in the case submitted as aforesaid.

And hereupon, as well the notice of appeal and return thereto aforesaid, as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the said supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court, before the justices thereof, &c.

(Signed) COR'S TEN BROECK,
Dep. Clerk.

COURT OF APPEALS, CLERK'S OFFICE,
Albany, October 9th, 1863.

I hereby certify that the preceeding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached.

(Signed) COR'S TEN BROECK, *Dep. Clerk.*

6 Supreme court of the State of New York, first judicial district.

LEWIS H. MEYER, plaintiff,
vs.
JAMES J. ROOSEVELT, defendant.

CITY AND COUNTY OF NEW YORK:

Case agreed upon by the above-named parties to a question of difference to be submitted to the court without action, pursuant to § 372 of the Code of Procedure.

The parties to this controversy hereby mutually agree upon and submit to this court the following statement of facts:

The plaintiff claims that the defendant deliver up a certain bond and mortgage to be cancelled, and that he execute a certificate of acknowledgement of satisfaction sufficient to discharge the same of record.

The defendant resists said claim.

The following are the facts upon which the controversy depends:

On or about the 23d August, 1854, one Samuel Bowne executed and delivered his bond to the defendant conditioned for the
7 payment of the just and full sum of eight thousand dollars, with interest half-yearly, on the 23d day of August, 1857, a copy of which is hereto annexed and forms part of this case.

The bond was given to secure a loan made to Bowne, amounting to $8,000, for which the defendant gave said Bowne his check upon the Chemical Bank in the city of New York, payable in gold at the option of Bowne.

The defendant invested said money as trustee of another party.

As a further security, Bowne and his wife executed to the defendant, at the same time, a mortage on certain land in Richmond county, State of New York; a copy of which mortgage, which was duly recorded on the next day, is also hereto annexed. The mortgaged premises were subsequently conveyed to the plaintiff, in fee, by deed dated 28 May, 1861, subject to said mortgage, the payment of which the plaintiff assumed; the amount secured thereby having been deducted from the purchase money.

On the eleventh day of June, 1862, the plaintiff desiring, as such owner in fee, to pay and discharge the mortgage, tendered to the defendant eight thousand one hundred and seventy dollars, being the amount of principal and interest up to the said eleventh day to June, 1862, in notes of the United States, issued under the act of Congress, approved February 25, 1862, entitled "An act to authorize the issue of U. S. notes, and for the redemption and funding thereof and for funding the floating debt of the United States."

The defendant refused to receive the same as legal tender, and claimed that the re-payment should be made in gold coin of the United States, as being the money in which the loan was made.

It was thereupon agreed by and between the said parties that the defendant should receive, and he accordingly did receive, the said sum of $8,170 in said notes of the United States, conditionally, and that the question whether the said notes of the United States are and were a legal tender in payment of said mortgage debt and interest should be submitted to a court having jurisdiction, and if such court shall decide that said notes of the United States were and are a legal tender in payment and in discharge of said bond and mortgage,
8 that then the said motgagee shonld deliver up said bond and mortgage and acknowledge satisfaction thereof, and discharge the same of record; but if the court shall decide that the said notes of the United States were not and are not a legal tender in payment of said mortgage debt, that then the plaintiff pay to the defendant the further sum of three hundred twenty-six $\frac{78}{100}$ dollars with interest thereon from the 11th day of June, 1862, being the amount of

difference at 4 per cent. between the market value of said notes and said gold coin of the United States on said eleventh day of June, 1862, and that upon payment of said sum of $326\frac{18}{100}$ with interest, the defendant deliver up the bond and mortgage to be cancelled, and acknowledge satisfaction thereof, and discharge the same of record, and that each party, in either event, pay his own costs.

The question submitted to the court upon this case is:

Were the said notes of the United States a legal tender on the part of the plaintiff?

If the court shall decide this question in the affirmative, then judgment is to be rendered for plaintiff, ordering the defendant to deliver up said bond and mortgage to be cancelled, and to acknowledge satisfaction thereof, and discharge the same of record.

If, on the other hand, the court shall decide the said question in the negative, then judgment is to be rendered in favor of defendant, ordering the plaintiff to pay the additional sum of three hundred and twenty-six $\frac{18}{100}$ dollars, with interest from the 11th day of June, 1862; and that upon the payment of this sum, with interest, the defendant acknowledge satisfaction of said bond and mortgage, and discharge the same of record, and deliver up the said bond and mortgage to be cancelled; and that each party pay his own costs in either event.

And the parties herein mutually pray for the judgment of this court herein.

Dated New York, 25th June, 1862.

J. J. ROOSEVELT,
L. H. MEYER.

9 CITY AND COUNTY OF NEW YORK, *ss:*

James J. Roosevelt, of the city of New York, and Lewis H. Meyer, of Southfield, county of Richmond, State of New York, being severally duly sworn, say, each for himself, that the controversy mentioned in the foregoing case is real, and the proceedings in good faith, to determine the rights of the parties.

J. J. ROOSEVELT.
L. H. MEYER.

Sworn before me, this 25th day of June, 1862.

B. ROELKER,
Notary Public, New York.

Copy Bond.

Know all men by these presents that I, Samuel Bowne, of Staten Island, am held and firmly bound unto James J. Roosevelt, of the city of New York, in the sum of sixteen thousand dollars lawful money of the United States of America, to be paid to the said James J. Roosevelt, his executors, administrators, or assigns; for which payment well and truly to be made I bind myself, my heirs, executors, and administrators firmly by these presents. Sealed with my

seal. Dated the twenty-third day of August, one thousand eight hundred and fifty-four.

The condition of the above obligation is such, that if the above bounden Samuel Bowne, his heirs, executors, or administrators shall well and truly pay or cause to be paid unto the above-named James J. Roosevelt, his executors, administrators, or assigns the just and full sum of eight thousand dollars, on the twenty-third day of August, which will be in the year one thousand eight hundred and fifty-seven, and the interest thereon at the rate of seven per cent. per annum, payable half yearly from the date hereof till the whole principal sum shall be paid, without any fraud or other delay, then the above obligation to be void, otherwise to remain in full force and virtue.

And it is hereby expressly agreed that should any default be made in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable as above expressed, and should the same remain unpaid and in arrear for the space of thirty days, then and from thenceforth, that is to say, after the lapse of the said thirty days, the aforesaid principal sum of eight thousand dollars, with all arrearage of interest thereon, shall, at the option of the said James J. Roosevelt, or his legal representatives, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

[L. S.] SAMUEL BOWNE.

Sealed and delivered in the presence of—
R. M. BRANTINGHAM.

Copy mortgage.

This indenture, made the twenty-third day of August, in the year one thousand eight hundred and fifty-four, between Samuel Bowne, of Staten Island, and Eliza, his wife, of the first part, and James J. Roosevelt, of the city of New York, of the second part: Whereas, the said Samuel Bowne is justly indebted to the said party of the second part in the sum of eight thousand dollars, lawful money of the United States of America, secured to be paid by certain bond or obligation, bearing even date with these presents, in the penal sum of sixteen thousand dollars, lawful money as aforesaid, conditioned for the payment of the said first-mentioned sum of eight thousand dollars, , which will be in the year one thousand eight hundred and fifty-seven, and interest thereon at the rate of seven per cent. per annum, payable half yearly, from the date hereof, till the whole principal sum shall be paid; which said bond also contains an agreement, that should any default be made in the payment of the said interest, or any part thereof, on any day whereon the same is made payable as above expressed, and should the same remain unpaid and in arrear for the space of thirty days, that then and from thenceforth, that is to say, after the lapse of the said thirty days, the aforesaid principal sum of eight thousand dollars, with all

arrearage of interest thereon, shall, at the option of the said party of the second part, or his legal representatives, become and be
11 due and payable immediately thereafter, although the time limited for the payment thereof may not then have expired, anything in the said bond contained to the contrary thereof in anywise notwithstanding; as by the said bond or obligation, and the condition thereof, and the said agreement therein contained, reference being thereunto had, may more fully appear. Now this indenture witnesseth, that the said *part* of the said first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to in hand paid by the said *part* of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, *ha* granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents *doe* grant, bargain, sell, alien, release, convey, and confirm unto the said *part* of the second part, and to heirs and assigns forever, all that parcel of land lying in the town of Southfield, county of Richmond, and State of New York, on the northwesterly side of the old sandstone road, now commonly called the finger-board road.

(Here follows description.)

SAMUEL BOWNE. [L. S.]
ELIZA BOWNE.

12 Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof: And also all the estate, right, title, interest , property, possession, claim, and demand whatsoever, as well in law as in equity, of the said part of the first part, of, in, and to the same, and every part and parcel thereof with the appurtenances: To have and to hold the above granted, bargained and described premises, with the appurtenances, unto the the said part of the second part heirs and assigns, to their own proper use, benefit, and behoof for ever. Provided always, and these presents are upon this express condition, that if the said part of the first part, heirs, executors or administrators, shall well and truly pay unto the said part of the second part, executors, administrators or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine, and be void. And the said . for heirs, executors, and administrators, do covenant and agree to pay unto the said part of the second part executors, administrators or assigns, the said sum of money and interest as mentioned above and expressed in the condition of the said bond.

And if default shall be made in the payment of the said sum of money above mentioned, or the interest that may grow due thereon, or of any part thereof, that then and from thenceforth it shall be lawful for the said part of the second part, executors, administrators, and assigns, to enter into and upon all and singular the premises hereby granted, or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said part of the first part, heirs, executors, administrators or assigns therein, at public auction, according to the act in such case made and provided. And as the attorney of the said part of the first part, for that purpose by these presents duly authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof, a good and sufficient deed or deeds of conveyance in the law for the same, in fee simple, and, out of the money arising from such sale, to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase-money (if any there shall be) unto the said of the first part heirs, executors, administrators or assigns; which sale, so to be made, shall forever be a perpetual bar, both in law and equity, against the said part of the first part, heirs and assigns, and against all other persons claiming or to claim the premises, or any part thereof, by, from, or under them, or either of them.

In witness whereof, the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above-written.

SAMUEL BOWNE. [L. S.]
ELIZA BOWNE. [L. S.]

Sealed and delivered in the presence of—

13 RICHMOND COUNTY, *ss:*

On this 23d day of August, 185 , before me personally came Samuel Bowne and Eliza, his wife, to me known to be the individuals described in, and who executed the within mortgage, and severally acknowledged that they executed the same, and the said Eliza acknowledged, on a private examination by me, made apart from her said husband, that she executed the said mortgage freely and without any fear or compulsion from her said husband.

R. M. BRANTINGHAM,
Justice of the Peace.

RICHMOND COUNTY, *ss:*

Recorded in the clerk's office, Liber No. 22 of mortgages, pages 244, &c., the twenty-fifth day of August, 1854, at 3 p. m.

ISRAEL C. DENY, *Clerk.*

14 This deed is duly acknowledged, and recorded in the clerk's office for Richmond county, 25th day of August, 1854.

1641

Supreme court of the State of New York, first district.

LEWIS H. MEYER, plaintiff,
ag't
JAMES J. ROOSEVELT, defendant.

At a general term of the supreme court for the first district, held at the city hall, in the city of New York, on the third day of June, 1863.

Present: Hons. Ingraham, Leonard, and Peckham, justices.

The case agreed upon by the above-named parties to a question of difference having been submitted to this court without action, pursuant to § 372 of the Code of Procedure, and the case having been argued before this court on the eighteenth and nineteenth of November, 1862, by B. Roelker, esq., as counsel for plaintiff, and J. J. Roosevelt, esq., defendant in person, and George T. Curtis, esq., as counsel for defendant, and due consideration being had, now, it is ordered, in pursuance of the stipulation of the parties, that judgment be entered for the defendant, that the plaintiff pay to the defendant the additional sum of three hundred and twenty-six $\frac{78}{100}$ dollars, with interest from the eleventh day of June, 1862, and that upon the payment of this sum, with interest, the defendant acknowledge satisfaction of the bond and mortgage in question, and discharge the same of record, and deliver up the said bond and mortgage to be cancelled, and that each party pay his own costs.

Enter. (Signed) WM. H. L.

Supreme court of the State of New York, first judicial district.

LEWIS H. MEYER, plaintiff and appellant,
against
JAMES J. ROOSEVELT, defendant and respondent.

SIR: Take notice that the plaintiff and appellant in this action, Lewis H. Meyer, appeals to the court of appeals of the State of New York from the whole of the judgment of the general term of the supreme court of the State of New York for the first judicial district, rendered at the May term thereof, to wit, on the third day of June, 1863, in favor of the above-named defendant against the above-named plaintiff, and entered and docketed in the office of the clerk of this court, on the fourth day of June, 1863, ordering, in pursuance of the stipulations of the parties, that the plaintiff pay the additional sum of three hundred and twenty-six $\frac{78}{100}$ dollars, with interest from the 11th day of June, 1862.

New York, 4th June, 1863,
Yours, &c.,

B. ROELKER,
Att'y for Pl'ff and Appellant.

To J. J. ROOSEVELT, Esq.,
Att'y in person.
HENRY W. GENET, Esq.,
Clerk of Supreme Court for First Judicial District.

16 STATE OF NEW YORK,
City and County of New York:

I, Henry W. Genet, clerk of the supreme court of said State, in and for the said city and county, do hereby certify that the preceding consists of certified copies of the judgment roll and notice of appeal on file in my office.

In testimony whereof, I have hereunto subscribed my name, and affixed my official seal, this 4th day of June, A. D. 1863.

H. W. GENET, *Clerk.*

17 *Judgment.*

Supreme court of the State of New York, first judicial district.

At a special term of the supreme court of the State of New York for the first judicial district, held at the City Hall, in the city of New York, on the 17th day of October, 1863.

Present: Honorable D. P. Ingraham, justice.

LEWIS H. MEYER, plaintiff,
against
JAMES J. ROOSEVELT, defendant.

The judgment of this court, rendered and entered on the third day of June, 1863, having been appealed from by the plaintiff to the court of appeals of the State of New York, and the same having been reversed and judgment having been ordered by the court of appeals in favor of the plaintiff and appellant therein, and the remittitur of the said court of appeals having been duly filed in this court.

18 Now, on motion of B. Roelker, attorney, and of counsel for plaintiff, it is ordered and adjudged by this court that *that* the judgment of the said court of appeals be made the judgment of this court, and that judgment in this action be, and the same is hereby, rendered in favor of the plaintiff therein. And that the defendant herein deliver up the bond and mortgage mentioned in the case submitted and acknowledge satisfaction thereof, and discharge the same of record. And that each party pay his own costs according to the stipulation contained in the case submitted.

Ent. D. P. ING.

Endorsed: U. S. Supreme Court. Lewis H. Meyer, plaintiff, against James J. Roosevelt, defendant. Copy judgment. B. Roelker, att'y for plaintiff.

DEAR SIR: Please take notice that the judgment, of which the within is a copy, was duly entered on this 17th day of October, 1863. U. S. Oct. 17, 1863.

Yours, &c.,

B. ROELKER,
Att'y for Plaintiff, 49 *Wall st., N. Y.*

TO JAMES J. ROOSEVELT, Esq.,
Def't in Person.

19 STATE OF NEW YORK,
City and County of New York, ss:

I, Henry W. Genet, clerk of the said city and county, do certify that I have compared the preceding with the original judgment roll, in my office, and that the same are correct transcripts therefrom and of the whole of such original.

[SEAL.] In witness whereof, I have hereunto subscribed my name and affixed my official seal this 8th day of December, 1863.

[STAMP.] H. W. GENET, *Clerk*.

20 *Assignment of error.*

Supreme Court of the United States.

JAMES J. ROOSEVELT, plaintiff in error,
vs.
LEWIS H. MEYER, defendant in error.

And afterwards, to wit, on the twelfth day of December, of the term of December, in the year one thousand eight hundred and sixty-three, before the judges of the Supreme Court of the United States, at the city of Washington, comes the said James J. Roosevelt, plaintiff in error, by Christian H. Scharff, his attorney, and says: that, in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit, that the declaration or complaint aforesaid, and the matters therein contained, are not sufficient in law for the said Lewis H. Meyer to have or maintain his aforesaid action thereof against the said James J. Roosevelt. There is also error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said Lewis H. Meyer against the said James J. Roosevelt, whereas, by the law of the land, the said judgment ought to have been given for the said James J. Roosevelt against the said Lewis H. Meyer; and the said James J. Roosevelt prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that
21 he may be restored to all things which he hath lost by occasion of the said judgment.

CHRISTIAN H. SCHARFF,
Attorney for Plaintiff in Error.
J. BUCHANAN HENRY,
Of Counsel.

Endorsed: U. S. Supreme Court. James J. Roosevelt, pl'ff in error, *vs.* Lewis H. Meyer, def't in error. Assignment of error. Christian H. Scharff, att'y for pl'ff in error; J. Buchanan Henry, of counsel.

Filed Dec. 11, 1863.

Supreme Court of the United States.

JAMES J. ROOSEVELT, PLAINTIFF IN ERROR,

vs.

LEWIS H. MEYER, DEFENDANT IN ERROR.

BRIEF OF DEFENDANT IN ERROR, ON MOTION TO DISMISS THE WRIT OF ERROR.

1851

Supreme Court of the United States.

JAMES J. ROOSEVELT, PLAINTIFF IN ERROR,

vs.

LEWIS H. MEYER, DEFENDANT IN ERROR.

BRIEF OF DEFENDANT IN ERROR, ON MOTION TO DISMISS THE WRIT OF ERROR.

STATEMENT.

This is a case brought to this Court by a writ of error to the highest State Court of the State of New York. The case below was submitted, under the statute of the State, to the Court below, on an agreed statement of facts, which were as follows:

On the eleventh of June, 1862, the defendant in error, plaintiff below, desiring to pay a bond and mortgage which he had assumed to pay, and which were held by the plaintiff in error, defendant below, as original mortgagee, tendered to the latter the sum of $8,171, being the full amount of principal and interest, in notes of the United States, issued under the act of Congress approved 25th February, 1862, entitled "An act to authorize the issue of United States notes, and for the redemption and funding thereof," &c.

The plaintiff in error refused to receive the same as legal tender, and claimed that the repayment should be made in gold coin of the United States.

M'GILL & WITHEROW, PRINTERS.

It was thereupon agreed between the parties that the question, whether the said notes of the United States are and were a legal tender in payment of said mortgage debt and interest, should be submitted to a court having jurisdiction, and if the court decided that said notes of the United States were and are a legal tender in payment of said bond and mortgage, that then the mortgagee, the plaintiff in error, should deliver up the bond and mortgage, and discharge the same of record; but if the court should decide that they were not a legal tender, the defendant in error should pay an additional sum agreed upon. The question submitted to the Court was:

"*Were the said notes of the United States a legal tender on the part of the defendant in error, plaintiff below?*"

If the Court should decide this question in the *affirmative*, then judgment was to be rendered for the defendant in error; if decided in the *negative*, then judgment was to be rendered for the plaintiff in error, defendant below.

The supreme court of the State, at general term, decided the question in the negative, and judgment was rendered for the plaintiff in error. The defendant in error appealed to the court of appeals of the State of New York, and this court on the 29th of September, 1863, reversed the decision of the court below, and rendered judgment in favor of the defendant in error, and in their order for judgment the court add the following:

"*And it is hereby certified and stated by this court that the defendant and respondent on the hearing of this case, relied upon certain provisions in the Constitution of the United States, namely Article I., Section 8, clause 5, of the said Constitution, and Articles 5, 9, and 10 of the amendments thereof, the effect of which, as the said respondent insisted, was, that the debt, owing to the said respondent upon and by virtue of the bond and mortgage mentioned in the submission of the case, could not be paid against the*

will of the said creditor in anything but gold or silver coin, and that the said claim of the respondent was overruled and disallowed by this court."

The plaintiff in error thereupon brings this writ of error under the 25th section of the judiciary act of 1789, and the defendant in error now moves to dismiss the writ on the ground that this Court has no jurisdiction under the 25th section of said act, inasmuch as the highest court of law and equity of the State, in which a decision in the suit could be had, decided *in favor* of the validity of the act of Congress of 25th of February, 1862, which was the only statute of the United States drawn in question in the case.

POINTS.

I.

In order to give jurisdiction to this Court, it must appear by the record that one of the questions stated in the 25th section of the act of 1789, did arise in the court below, and that a decision was actually made thereon by the same court, in the manner required by the section. It is not indispensable that it should appear on the record in so many words, or by direct and positive statement, that the question was made and the decision given on the very point. It is sufficient, if it is clear from the facts stated, by just and necessary inference, that the question was made, and that the court below must, in order to have arrived at the judgment pronounced by it, have come to the very decision of that question, as indispensable to that judgment.

Maxwell *vs* Newbold, 18 How. R., 515; Crowell *vs.* Randell, 10 Peters, p. 368.

It is apparent on the record that the validity of act of 25th of February, 1862, alone was drawn in question, and that the decision of the court was *in favor* of its validity, and was in favor of the right set up under the statute.

Hence this court has no jurisdiction to revise the judgment below.

Gordon *vs.* Caldcleugh, 3 Cranch, 268.
Fulton *vs.* McAffee, 16 Pet., 149.
Strader *vs.* Baldwin, 9 How., 261.
Linton *vs.* Stanton, 12 How., 423.

It is not apparent on the record that the plaintiff in error has set up any act of Congress or section of the Constitution, under which he could claim a decision in the negative on the question submitted to the court below, except the constitutional validity of the act of 1862, under which the notes of the United States were made a legal tender.

II.

In order to give this court jurisdiction under the 25th section of the act of 1789, it must appear on the record itself to be one of the cases enumerated in that section, and nothing out of the record certified to this court can be taken into consideration.

Armstrong *vs.* Athens county, 16 Pet., 281.
Williams *vs.* Norris, 12 Wheat., 117.

The certificate of the court below that, on the hearing of the case, the plaintiff relied on the certain provisions of the constitution mentioned, can be of no effect, because the record itself, aside of the certificate, does not show by just and necessary inference that these questions were made, and that the court below must, in order to have arrived at the judgment pronounced by it, have come to the very decision of those questions, as indispensable to that judgment.

Wilson *vs.* Blackbird Creek Marsh Co., 2 Pet., 245, 250.
Harris *vs.* Denny, 3 Pet., 292, 302.
Williams *vs.* Norris, 12 Wheat., 117.

III.

The certificate of the court below does not state, that the points referred to were especially set up by the plaintiff, but only that on the hearing, *i. e.* argument of the case, the plaintiff relied upon the sections of the Constitution referred to. It is evident that the plaintiff in error by way of argument against the constitutional validity of the act of 1862, relied upon the sections of the Constitution to demonstrate that the act is unconstitutional and invalid.

The question whether the notes were a legal tender, could only depend upon an act of Congress, and not upon any dormant power in the Constitution.

IV.

The question regarding the validity of any act of Congress will always involve the construction of one or more sections of the Constitution. The validity of an act depends upon the power of Congress to pass it, and this power depends upon the Constitution, as the source of all its powers. Either party in any suit, where such a question arises, must claim under some section of the Constitution, for or against the validity of the act. If the decision is in favor of the validity, it may, in one sense, be said that what the other party claimed, was disallowed.

If the overruling of such claims could answer the provisions of the 25th section to give this Court jurisdiction, then the first subdivision might be rendered nugatory in any case by a certificate of the court below, similar to that in the present case.

V.

The right to this appeal is claimed under the third subdivision of the 25th section. The title and right there mentioned are such as are either created or protected by the Constitution or a statute, and refer to a *jus in re* or *jus ad rem* under them, or to a personal right or privilege, granted to a particular class of persons out of the common course of legislation or of the common law. The claim of the plaintiff, certified to, is not one of those, but only a demand that the question which he submitted to the court should be decided in the negative, whereas the court decided it in the affirmative.

No right or title set up or claimed by the plaintiff, under the Constitution, has been decided against by the court below, and hence the writ of error cannot be sustained, and must be dismissed.

B. ROELKER,
Of Counsel for Defendant in Error.

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United States Supreme Court.

JAMES J. ROOSEVELT,
Plaintiff in Error,

vs.

LEWIS H. MEYER,
Defendant in Error.

Points of Plaintiff in Error on Motion to Dismiss.

Defendant in error moves upon the record filed in this cause to dismiss the writ of error "on the ground that this Court has no jurisdiction in the premises."

I. The 25th section of the Judiciary Act of 1789, gives a right of appeal or review to the United States Supreme Court, from a final judgment or decree in any suit in the highest Court of Law or Equity of a State in which a decision in the suit could be had.

1st. "Where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity;

2nd. Or where is drawn in question the validity of a Statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of such their validity;

3rd. *Or where is drawn in question the construction of any clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision is against the title, right, privilege or exemption specially set up or claimed by either party, under such clause of the said Constitution, treaty, statute or commission.*"

The judgment appealed from in this cause is a *final judgment* of the highest Court of Law or Equity of the State of New York, "because it determines the particular cause."

Weston, et al., vs. The City Council of Charleston, 2 Peters, 464.

II. The record brought up to this Court by the writ of error, ought to show that there was question in the Court below either of the validity of a statute or authority exercised under the United States, and that the decision was against it; or of a statute or authority exercised under a State on the ground of repugnancy to the Constitution, and the decision was in its favor; or that there was question of the *construction of some clause* of the Constitution of the United States, and the decision was against the right claimed by *either party under such clause* of the said Constitution. Two things should have occurred and be apparent on the record, viz., that some one of the questions stated in the 25th sec. of the Judiciary Act did arise in the Court below, and that a decision was actually made thereon by that Court, in the manner required by that section.

On this point I need only cite a few of the numerous decisions of this Court:

Davis vs. Packard and others, 6 Peters, 41.
Crowell vs. Randell, 10 Peters, 368.
McKinney, et al., vs. John Carroll, 12 Peters, 66.
Ocean Ins. Co., vs. William Polleys, 13 Peters, 157.
Fulton, et als., vs. McAffee, 16 Peters, 149.
Matheson, et al., vs. Branch Bank Mobile, 7 Howard, 260.
Williams' Trustee vs. Oliver, 12 Howard, 111.

The record in this cause shows that there was drawn in question in the Court below the true construction of certain

clauses of the Constitution, to wit., clause 5, sec. 8, Art. I, and of the amendments, Articles 5, 9 and 10, and it shows, further, that the decision of the Court below was against the right claimed by Roosevelt thereunder. By such adverse decision he is entitled to an appeal. The Court below, in fact, took special care to insure justice as far as it lay in their power to both parties, by so framing the judgment that no doubt could exist as to its appealable character, and evidently with this intent they certified as follows, (see record judgment of Court of Appeals:) "And it is hereby certified and stated by this Court, that the defendant and respondent on the hearing of this case, relied upon certain provisions of the Constitution of the United States, namely, Article I, section 8, clause 5 of the said Constitution, and Articles 5, 9 and 10 of the amendments thereof, the effect of which the said respondent insisted was, that the debt owing to the said respondent upon and by virtue of the bond and mortgage mentioned in the submission of the case, could not be paid against the will of the said creditor in any thing but gold or silver coin, and that the said claim of the said respondent was overruled and disallowed by this Court."

Let us therefore turn to these clauses of the Constitution concerning the construction of which there was question below, and see the nature of the *right*, if any, which they confer upon Roosevelt, and *against* which right the Court below decided.

Clause 5, sec. 8, Article I. "To establish * * * * and uniform laws on the subject of bankruptcies throughout the United States."

Amendments, Article 5. * * * * * * * * * "No person shall be deprived of life, liberty *or property* without due process of law, nor shall private property be taken for public use without just compensation."

Article 9. "The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people."

Article 10. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Under these several clauses of the Constitution, but particularly under Article 5 of amendments, the plaintiff in error, Roosevelt, claimed as a *right of property*, sacred under the fundamental law of the Union, that he could not, by the operation of the Act of February 1862, directly or *indirectly* be deprived of his property, as it would be a deprivation, without due process of good constitutional law, and that therefore he could not be forced and made against his will to accept *as full* payment and discharge of a debt of $5,000 due and owing to him from the defendant in error Meyer, certain paper securities of the United States, called Legal Tender Treasury Notes, the market value of which at the time of their tender to him was only $4622; or about $326 78 less than said debt, and the effect of which tender would be, if enforced, to confiscate to the use of said debtor Meyer, a portion to wit, $326 78 of said debt.

III. Sub-division 3, of the 25th sec. of the Judiciary Act, giving an appeal to the citizen where the decision of the State Court is against a right claimed under and depending upon the construction of any clause of the Constitution, is much broader in its scope than sub-division 1st, and must in many instances include cases primarily falling under that division. It is, in fact, co-extensive with the provision of the Constitution which extends the judicial

power of the Supreme Court to "all cases in law and equity arising under this Constitution."

The 1st sub-division of the 25th section seems mainly devised to protect the Acts of the Federal Legislature from hostile State Judiciaries and local or State misconstruction, and to secure uniformity of decision. It was never intended by its framers to take away from the highest Federal Court the power of review, where any right, privilege or exemption under the Constitution or Federal Laws was involved, nor to deprive the citizen of such appeal in suits embracing Constitutional principles, even when the amount in question is insignificant. Were this not so, Congress, with the aid of the State Judiciaries, could make, expound and determine the laws of the Union, and so be beyond the control and revision of this Court.

IV. No construction of the Judiciary Act can be made to deprive the citizen of the United States of the protection guaranteed to him by Article III, sec. 11, clause 1, of the Constitution, which provides that judicial power of the Supreme Court "shall extend to all cases in law and equity arising under the Constitution, the laws of the United States, and treaties made or which shall be made under their authority."

A case is said to "arise" under the Constitution or laws of the United States whenever its correct decision depends on the construction of either.

Cohens vs. Virginia, 6 Wheaton, 379.

V. The stipulation of the parties to this cause shows that they both intended that the case should be brought before the Supreme Court of the United States.

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